

AN ACT

RELATING TO PUBLIC UTILITIES; PROVIDING FOR SIMULTANEOUS DETERMINATION OF RATEMAKING PRINCIPLES AND PUBLIC CONVENIENCE AND NECESSITY; AUTHORIZING UTILITIES TO FILE APPLICATIONS OF PUBLIC CONVENIENCE AND NECESSITY BEFORE FILING APPLICATIONS FOR LOCATION APPROVAL; ESTABLISHING FACTORS TO BE CONSIDERED WHEN APPROVING APPLICATIONS FOR LOCATION APPROVAL; PROVIDING DEADLINES FOR APPROVAL OF APPLICATIONS; ALLOWING APPROVAL OF APPLICATIONS WITHOUT A FORMAL HEARING; PRESCRIBING USE OF RATEMAKING PRINCIPLES AND TREATMENTS IN ALL PROCEEDINGS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 62-9-1 NMSA 1978 (being Laws 1941, Chapter 84, Section 46, as amended) is amended to read:

"62-9-1. NEW CONSTRUCTION--RATEMAKING PRINCIPLES.--

A. No public utility shall begin the construction or operation of any public utility plant or system or of any extension of any plant or system without first obtaining from the commission a certificate that public convenience and necessity require or will require such construction or operation. This section does not require a public utility to secure a certificate for an extension within any municipality or district within which it lawfully commenced operations before June 13, 1941 or for an extension within or to territory already served by it, necessary in the ordinary

course of its business, or for an extension into territory contiguous to that already occupied by it and that is not receiving similar service from another utility. If any public utility or mutual domestic water consumer association in constructing or extending its line, plant or system unreasonably interferes or is about to unreasonably interfere with the service or system of any other public utility or mutual domestic water consumer association rendering the same type of service, the commission, on complaint of the public utility or mutual domestic water consumer association claiming to be injuriously affected, may, upon and pursuant to the applicable procedure provided in Chapter 62, Article 10 NMSA 1978, and after giving due regard to public convenience and necessity, including reasonable service agreements between the utilities, make an order and prescribe just and reasonable terms and conditions in harmony with the Public Utility Act to provide for the construction, development and extension, without unnecessary duplication and economic waste.

B. If a certificate of public convenience and necessity is required pursuant to this section for the construction or extension of a generating plant or transmission lines and associated facilities, a public utility may include in the application for the certificate a request that the commission determine the ratemaking principles and treatment that will be applicable for the facilities that are

the subject of the application for the certificate. If such a request is made, the commission shall, in the order granting the certificate, set forth the ratemaking principles and treatment that will be applicable to the public utility's stake in the certified facilities in all ratemaking proceedings on and after such time as the facilities are placed in service. The commission shall use the ratemaking principles and treatment specified in the order in all proceedings in which the cost of the public utility's stake in the certified facilities is considered. If the commission later decertifies the facilities, the commission shall apply the ratemaking principles and treatment specified in the original certification order to the costs associated with the facilities that were incurred by the public utility prior to decertification.

C. The commission may approve the application for the certificate without a formal hearing if no protest is filed within sixty days of the date that notice is given, pursuant to commission order, that the application has been filed. The commission shall issue its order granting or denying the application within nine months from the date the application is filed with the commission. Failure to issue its order within nine months is deemed to be approval and final disposition of the application; provided, however, that the commission may extend the time for granting approval for

an additional six months for good cause shown.

D. As used in this section, "mutual domestic water consumer association" means an association created and organized pursuant to the provisions of:

(1) Laws 1947, Chapter 206; Laws 1949, Chapter 79; or Laws 1951, Chapter 52; or

(2) the Sanitary Projects Act."

Section 2. Section 62-9-3 NMSA 1978 (being Laws 1971, Chapter 248, Section 1, as amended) is amended to read:

"62-9-3. LOCATION CONTROL--LIMITATIONS.--

A. The legislature finds that it is in the public interest to consider any adverse effect upon the environment and upon the quality of life of the people of the state that may occur due to plants, facilities and transmission lines needed to supply present and future electrical services. It is recognized that such plants, lines and facilities will be needed to meet growing demands for electric services and cannot be built without in some way affecting the physical environment where these plants, facilities and transmission lines are located. The legislature therefore declares that it is the purpose of this section to provide for the supervision and control by the commission of the location within this state of new plants, facilities and transmission lines for the generation and transmission of electricity for sale to the public.

B. No person, including any municipality, shall begin the construction of any plant designed for or capable of operation at a capacity of three hundred thousand kilowatts or more for the generation of electricity for sale to the public within or without this state, whether or not owned or operated by a person that is a public utility subject to regulation by the commission, or of transmission lines in connection with such a plant, on a location within this state unless the location has been approved by the commission. For the purposes of this section, "transmission line" means any electric transmission line and associated facilities designed for or capable of operations at a nominal voltage of two hundred thirty kilovolts or more, to be constructed in connection with and to transmit electricity from a new plant for which approval is required.

C. Application for approval shall contain all information required by the commission to make its determination, be made in writing setting forth the facts involved and be filed with the commission. The commission shall, after a public hearing and upon notice as the commission may prescribe, act upon the application. The commission may condition its approval upon a demonstration by the applicant that it has received all necessary air and water quality permits. A public utility regulated by the commission may submit an application pursuant to Section 62-9-1 NMSA 1978

for a certificate of public convenience and necessity prior to filing an application for location approval pursuant to this section in order to determine the need for the generating plant or transmission line prior to determination of the appropriate location.

D. No approval shall be required for additions to or modifications of an existing plant or transmission line.

E. The commission shall approve the application for the location of the generating plant unless the commission finds that the operations of the facilities for which approval is sought will not be in compliance with all applicable air and water pollution control standards and regulations existing. The commission shall not require compliance with performance standards other than those established by the agency of this state having jurisdiction over a particular pollution source.

F. The commission shall approve the application for the location of the transmission lines unless the commission finds that the location will unduly impair important environmental values.

G. No application shall be approved pursuant to this section that violates an existing state, county or municipal land use statutory or administrative regulation unless the commission finds that the regulation is unreasonably restrictive and compliance with the regulation is

not in the interest of the public convenience and necessity, in which event and to the extent found by the commission the regulation shall be inapplicable and void as to the siting. When it becomes apparent to the commission that an issue exists with respect to whether a regulation is unreasonably restrictive and compliance with the regulation is not in the interest of public convenience and necessity, it shall promptly serve notice of that fact by certified mail upon the agency, board or commission having jurisdiction for land use of the area affected and shall make the agency, board or commission a party to the proceedings upon its request and shall give it an opportunity to respond to the issue. The judgment of the commission shall be conclusive on all questions of siting, land use, aesthetics and any other state or local requirements affecting the siting.

H. A public utility subject to the jurisdiction of the commission may elect to file an application pursuant to this section with the commission for location approval of an electric transmission line or associated facilities designed for or capable of operation at a nominal voltage of one hundred fifteen kilovolts or more but less than two hundred thirty kilovolts if:

(1) the public utility files an application for construction, extension, rebuilding or improvement of the electric transmission line or associated equipment under any

applicable county or municipal land use statute, ordinance or administrative regulation; and

(2) the agency, board or commission of the county or municipality disapproves the application. For purposes of this subsection, "disapprove" means the failure of the county or municipal agency, board or commission to issue a final order approving the application within two hundred forty days of the public utility's filing of a complete application with the agency, board or commission. An application shall be deemed complete if within fifteen working days of the public utility's filing of the application, or a supplement or amendment thereto, the agency, board or commission fails to send written notice to the public utility enumerating the specific requirements under the applicable county or municipal land use statute, ordinance or administrative regulation that the application fails to satisfy.

I. Upon consideration of the application and the standards set forth in Subsection G of this section, the commission may authorize construction, extension, rebuilding or improvement of the transmission line or facilities notwithstanding the prior disapproval of the county or municipal agency, board or commission. The judgment of the commission shall be conclusive on all questions of siting, land use, aesthetics and any other state or local requirements affecting the siting.

J. Nothing in this section shall be deemed to confer upon the commission power or jurisdiction to regulate or supervise any person, including a municipality, that is not otherwise a public utility regulated and supervised by the commission, with respect to its rates and service and with respect to its securities, nor shall any other provision of the Public Utility Act be applicable with respect to such a person, including a municipality.

K. The commission may approve an application filed pursuant to this section without a formal hearing if no protest is filed within sixty days of the date that notice is given that the application has been filed. The commission shall issue its order granting or denying the application within six months from the date the application is filed with the commission; provided, however, that:

(1) if a public utility simultaneously files an application for approval of location of a transmission line pursuant to this section and an application for a certificate of public convenience and necessity pursuant to Subsection B of Section 62-9-1 NMSA 1978, the commission shall issue its order granting or denying the applications within nine months from the date the applications are filed with the commission; provided, however, that the commission may extend the time for granting approval an additional six months for good cause shown;

(2) if a public utility files an application for approval of location of a transmission line pursuant to this section after its application for a certificate of public convenience and necessity has been approved pursuant to Subsection B of Section 62-9-1 NMSA 1978, the commission shall issue its order granting or denying the application for approval of location of a transmission line within ninety days from the date the application is filed with the commission; and

(3) if a public utility files an application for approval of location of a transmission line pursuant to this section while its application for a certificate of public convenience and necessity is pending pursuant to Subsection B of Section 62-9-1 NMSA 1978, and the application for a certificate is subsequently approved, the commission shall issue its order granting or denying the application for approval of location of a transmission line within ninety days from the date the application for certificate of public convenience and necessity is approved.

L. Failure to issue its order approving or denying an application filed pursuant to this section within the time periods set forth in Subsection K of this section is deemed to be approval of the application; provided, however, that the commission may extend the time for granting approval for a transmission line that is subject to this section for an

additional nine months upon finding that the additional time is necessary to determine if the proposed location of the line will unduly impair important environmental values.

M. In determining if the proposed location of the transmission line will unduly impair important environmental values, the commission may consider the following factors;

(1) existing plans of the state, local government and private entities for other developments at or in the vicinity of the proposed location;

(2) fish, wildlife and plant life;

(3) noise emission levels and interference with communication signals;

(4) the proposed availability of the location to the public for recreational purposes, consistent with safety considerations and regulations;

(5) existing scenic areas, historic, cultural or religious sites and structures or archaeological sites at or in the vicinity of the proposed location; and

(6) additional factors that require consideration under applicable federal and state laws pertaining to the location."

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005. _____